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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of  
Sprint Communications Company L.P. (U-  
5112) and T-Mobile USA, Inc., a Delaware  
Corporation, For Approval of Transfer of  
Control of Sprint Communications Company  
L.P Pursuant to California Public Utilities  
Code Section 854(a).

Application 18-07-011

And Related Matter.

Application 18-07-012

**T-MOBILE USA, INC.'S RESPONSE TO DISH NETWORK CORPORATION'S  
PETITION TO MODIFY D.20-04-008**

**(PUBLIC VERSION)**

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**I. INTRODUCTION**

Pursuant to Rule 16.4 of the California Public Utilities Commission’s (“CPUC” or “Commission”) Rules of Practice and Procedure (“Rules”), T-Mobile USA, Inc. (“T-Mobile”), submits this Response to the Petition to Modify (“Petition”) D.20-04-008 (“Merger Decision”) filed by DISH Network (“DISH”) on April 28, 2021. As detailed below, the Petition should be denied as fatally flawed on both procedural and substantive grounds.

The Commission’s order approving the merger of T-Mobile and Sprint Communications Company L.P. (“Sprint”) was structured to create “a framework for ensuring the transaction will significantly benefit those Californians most in need of reliable, affordable access to modern telecommunications technology.”<sup>1</sup> Consistent with that framework and objective, T-Mobile has been investing heavily to rapidly deploy a world-leading network to bring 5G to all Californians. An important early step in this effort is migrating customers who are still on Sprint’s CDMA

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<sup>1</sup> *In re Sprint Commc’ns Co. and T-Mobile USA, Inc.*, D.20-04-008, 2020 Cal. PUC LEXIS 529, at \*47 (Apr. 16, 2020) (“Merger Decision”). *See also id.* at \*46-48 (stating that T-Mobile’s Lifeline, FCC, and other commitments will ensure the transaction “will significantly benefit those Californians most in need of reliable, affordable access to modern telecommunications technology”).

network – a 25-year-old technology equivalent to last century’s dial-up Internet – and upgrading them onto T-Mobile’s world-leading 4G/5G network. T-Mobile’s CDMA customers are being seamlessly migrated with no increase in service price. Although most CDMA customers need to simply change out their SIM card, T-Mobile has also provided many handset offerings, including 5G handsets for free to existing and new Sprint customers and free 4G handsets to Assurance Wireless customers.

DISH, by contrast, has been spending its time and resources on a campaign to keep Boost’s customers on a woefully outdated CDMA network because it does not want to spend the money that is required to timely migrate these customers. Despite its protests, DISH has agreed to and is fully capable of securing devices and taking the other actions necessary to transition its CDMA customers onto the new T-Mobile network before January 2022. The Commission should not confuse “cannot” with “prefer not to.”

While DISH claims to be surprised by the timing of T-Mobile’s sunset of the CDMA network, there is no factual basis for such surprise. Pursuant to a Master Network Services Agreement (“MNSA”) that DISH and T-Mobile executed prior to the close of the merger, DISH agreed to contractual provisions that required T-Mobile to provide 6 months’ advance notice to DISH prior to the sunset of the CDMA network, and that required DISH to pay for the transition of the Boost CDMA customers. This provision was critical to T-Mobile’s decision to enter into the agreement. Further, the 6-month period for notice was one that DISH – a notoriously hard-nosed and aggressive negotiator – itself proposed in the negotiations. The MNSA was vetted and approved by both the U.S. Department of Justice (“DOJ”) and the Federal Communications Commission (“FCC”). T-Mobile then provided DISH with nearly 15 months’ notice of its CDMA sunset – more than double what DISH agreed to under the MNSA. Consistent with its longstanding

precedent, the Commission should not insert itself into what is essentially a contractual dispute and allow DISH to change contractual obligations that it agreed to nearly 2 years ago.

In addition, in response to concerns from commenters in the FCC merger proceeding about not having sufficient time to prepare for the shutdown, the FCC expressly declined to require the CDMA network to be maintained beyond January 2021, finding that “it is not in the public interest to require a company to devote their limited resources to maintaining an outdated technology when those resources could instead be directed to bringing to American consumers faster, higher quality and more reliable services.”<sup>2</sup> DISH, of course, was an active participant throughout all aspects of the merger review and was served with the filing by T-Mobile setting forth its statement concerning the timing of the CDMA sunset. DISH has had full knowledge of this timing and cannot now feign surprise.

DISH’s Petition fails for numerous additional reasons. First, the Petition is untimely and should be dismissed on that basis alone. In addition, the relief it seeks – an order requiring T-Mobile to operate its CDMA network in California until at least July 2023 – is not supported by Ordering Paragraph (“OP”) 6 of the Merger Decision. OP 6 does not require T-Mobile to continue operating the CDMA network at all, much less for any specified period of time. DISH’s requested relief would also directly conflict with T-Mobile’s obligations under the federal court order (“Final Judgment”) negotiated with the DOJ, and the FCC’s determination that T-Mobile would not be required to maintain the CDMA network.

DISH’s requested relief would also harm, rather than further, the public interest by delaying the full 5G rollout for the benefit of Californians and keeping Boost customers on the outdated CDMA network for an extended period of time. In this regard, **DISH’s position is contrary to**

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<sup>2</sup> See *In re T-Mobile US, Inc. and Sprint Corp.*, 34 FCC Rcd. 10578, 10728 ¶ 339 (“FCC Merger Order”).

**policymakers’ efforts, including in California, to close the Digital Divide – a priority of both Governor Gavin Newsom’s Administration and the Legislature, and which is not helped by the continuation of an inferior network technology.**

Finally, T-Mobile is obliged to address false statements made by DISH in its Petition. Contrary to DISH’s claims, T-Mobile never committed to continue operating the CDMA network until July 2023, and T-Mobile’s timeframe for sunseting the CDMA network is entirely consistent with its plans presented to the CPUC, as well as its contract with DISH. T-Mobile proposed nearly 50 merger conditions, none of which pertained to how long the company would retain the Sprint network (CDMA or LTE) or even included the term “CDMA.” This is hardly surprising because at no point during the Commission’s 18-month proceeding did DISH or any other party ask for the CDMA network to be retained for any period of time, let alone for 3 years. DISH’s claims find no support in the Commission’s extensive, well-developed record.

Taken together, DISH’s Petition is infirm as a matter of both fact and law and should be summarily dismissed. If the Commission is inclined to get involved in this matter, it should encourage DISH to take all necessary actions to timely complete the transition of its CDMA customers. That is the only action that is fair and consistent with the parties’ MNSA, applicable federal orders, the Commission’s Merger Decision, and the public interest. T-Mobile and the Boost CDMA customers should not bear the consequence of DISH’s purposeful decision to date to not put in the necessary expense and effort to transition these customers onto a modern network.

## II. DISCUSSION

### A. STANDARD OF REVIEW

The Commission has statutory authority to “rescind, alter, or amend any order or decision made by it,”<sup>3</sup> but has consistently noted that it “exercise[s] this discretionary authority sparingly”<sup>4</sup> and “with great care.”<sup>5</sup> To that end, modifications of previous decisions are “justified only by extraordinary circumstances to protect parties from endless re-litigation of the same issues.”<sup>6</sup> Consequently, where a party seeks to modify a decision, the burden it bears is “substantial” and the request will be considered only if there is a factual error, conditions have undergone a material change, or the Commission proceeded on a basic misconception of law or fact.<sup>7</sup> As discussed more fully below, DISH has not met, and cannot meet, the substantial burden required to amend the Merger Decision.

### B. DISH’S PETITION SHOULD BE SUMMARILY DENIED AS UNTIMELY

Rule 16.4(d) provides that a petition to modify a Commission decision “*must* be filed and served *within one year of the effective date of the decision*,” unless the petitioner demonstrates that

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<sup>3</sup> Pub. Util. Code § 1708.

<sup>4</sup> *In re City of Vallejo*, D.85-03-053, 1985 Cal. PUC LEXIS 117, at \*19 (Mar. 20, 1985).

<sup>5</sup> *Order Instituting Rulemaking for Adoption of Amendments to a General Order and Procedures to Implement the Franchise Renewal Provisions of the Digital Infrastructure and Video Competition Act of 2006*, D.17-12-006, 2017 Cal. PUC LEXIS 578, at \*13 (Dec. 14, 2017).

<sup>6</sup> *Id.* See also A.18-07-011, Response of the Public Advocates Office and The Utility Reform Network to Joint Applicants’ Petition for Modification of Decision 20-04-008 at 6 (July 22, 2020) (“[T]he Commission has long recognized that this broad authority should be exercised with great care and justified only by extraordinary circumstances to protect parties from endless re-litigation of the same issues.”).

<sup>7</sup> See D.17-12-006, 2017 Cal. PUC LEXIS 578, at \*15 (citing *In re United Parcel Serv., Inc.*, D.97-04-049, 1997 Cal. PUC LEXIS 427, at \*15 (Apr. 9, 1997)). See also *In re Sprint Commc’ns Co. and T-Mobile USA, Inc.*, D.20-11-025, 2020 Cal. PUC LEXIS 994, at \*2 (Nov. 19, 2020) (“Claims of factual error or changed circumstances may be brought forward by means of a PFM.”).

“the petition could not have been presented within one year of the effective date of the decision.”<sup>8</sup>

Here, the Commission’s Merger Decision took effect on April 16, 2020,<sup>9</sup> but DISH did not file the Petition until April 28, 2021, almost 2 weeks after the one-year deadline.<sup>10</sup>

Moreover, DISH makes no attempt to explain why its Petition could not have been filed within one year. Nor could it, since the request should have been made months ago. T-Mobile notified DISH of the impending CDMA sunset on October 2, 2020, *more than 6 months* before the one-year deadline.<sup>11</sup> DISH had ample opportunity to file its Petition within the requisite time period. Meanwhile, T-Mobile has for the last 13 months relied on the terms of the Merger Decision, as well as its contracts with DISH and the FCC and DOJ orders, in carrying out its business plan, including with respect to the CDMA network. Because the Petition is untimely and DISH failed to offer any explanation for its late filing, the Commission should summarily deny DISH’s Petition.<sup>12</sup>

### **C. DISH’S PETITION IMPROPERLY ASKS THE COMMISSION TO IMPOSE A SIGNIFICANT NEW REQUIREMENT**

DISH’s Petition should also be rejected because the relief it seeks is improper on both procedural and substantive grounds.

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<sup>8</sup> Rule 16.4(d) (emphasis added).

<sup>9</sup> See generally Merger Decision, D.20-04-008, 2020 Cal. PUC LEXIS 529.

<sup>10</sup> See Petition at 2. As DISH notes, its initial request in this docket was filed on April 26, 2021, as a “Petition to Reopen A.18-07-011/012 for the Purpose of Enforcing D.20-04-008.” *Id.* at 1 n.1. That “petition” was rejected by the Docket Office on April 28, 2021, because it was incorrectly styled. See Attachment A, Email from M. Nakahara, Senior Legal Analyst, Commission Docket Office (Apr. 28, 2021).

<sup>11</sup> See *infra* Section D.

<sup>12</sup> See, e.g., *Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs*, D.20-08-007, 2020 Cal. PUC LEXIS 812, at \*8-9 (Aug. 6, 2020) (denying petition for modification because party failed to “address why it did not file a petition for modification, or otherwise bring the issue ... to the Commission’s attention, more immediately”).



As the Commission has recognized, “a major change to a decision,” such as a wholly new requirement or provision, is “not appropriately the subject of a petition to modify.”<sup>13</sup> Rather, recognizing the importance of finality after a decision’s issuance,<sup>14</sup> requests for such major changes “should be by application for rehearing or by a new application.”<sup>15</sup>

In its Petition, DISH strains to paint its request that the Commission “reopen this proceeding for the purpose of ensuring that T-Mobile ... keep[s] the CDMA network fully operational until, at least, July 1, 2023,”<sup>16</sup> as merely seeking enforcement, or at most clarification, of the Commission’s Merger Decision.<sup>17</sup> But, as detailed below, the only provision that DISH points to – OP 6 – cannot plausibly be read to require T-Mobile to continue operating the CDMA network for any period of time. Nor did T-Mobile testify that it would operate the CDMA network until 2023 – DISH’s claim to the contrary is simply false, as T-Mobile will further detail below. In reality, the relief DISH requests would require the Commission to create a new obligation out

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<sup>13</sup> *Order Instituting Rulemaking on Comm’n’s Own Motion to Change the Structure of Gas Utilities’ Procurement Practices et al.*, D.91-09-085, 1991 Cal. PUC LEXIS 603, at \*4 (Sept. 25, 1991). *See also In re S. Cal. Edison Co.*, D.89-12-022, 1989 Cal. PUC LEXIS 672, at \*17 (Dec. 6, 1989) (“[A] petition [for modification] is not the appropriate procedural vehicle for changes of this magnitude.”).

<sup>14</sup> *See* D.85-03-053, 1985 Cal. PUC LEXIS 117, at \*18.

<sup>15</sup> D.89-12-022, 1989 Cal. PUC LEXIS 672, at \*17. *See also In re Alternative Regulatory Frameworks*, D.98-12-091, 1998 Cal. PUC LEXIS 897, at \*2 (Dec. 17, 1998) (finding that petition for modification was improperly filed because it sought a “major change” to a decision and was “in fact an application for rehearing for which the filing deadline had long since passed”).

<sup>16</sup> Petition at 2.

<sup>17</sup> DISH’s original “petition” – which the Docket Office rejected, *see supra* note 10 – had been framed as seeking enforcement of the Merger Decision. *See* Petition to Reopen A.18-07-011/012 for the Purpose of Enforcing D.20-04-008 at 3-4 (Apr. 26, 2021). Notably, however, DISH did not cite to any relevant decisions – nor is T-Mobile aware of any – in which the Commission allowed a party to seek enforcement of a decision through a petition for modification.

of whole cloth.<sup>18</sup> That is precisely the type of major change that must be sought through a new application or an application for rehearing.<sup>19</sup>

**1. OP 6 Does Not Require T-Mobile to Maintain the CDMA Network Until 2023.**

DISH's central argument is that OP 6 requires T-Mobile to maintain the CDMA network for a 3-year period, until July 1, 2023.<sup>20</sup> However, that claim collapses based on the plain language of OP 6 alone, as OP 6 does not even mention, much less impose any limits on the sunset of, the CDMA network.<sup>21</sup> OP 6 provides that:

The legacy Sprint and T-Mobile customer experience shall not be degraded during the customer migration period (2020-2023) or the 5G build-out period (2020-2026). During such time New T-Mobile shall maintain LTE broadband speeds and coverage areas in California at no less than the speeds and coverage areas reported to the Federal Communications Commission on Form 477 by T-Mobile and Sprint for their respective LTE services as of December 31, 2019.<sup>22</sup>

Only one technology is referenced in OP 6 – LTE – and the OP requires T-Mobile to maintain “LTE broadband speeds and coverage areas in California.” There is nothing in OP 6

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<sup>18</sup> Similarly, DISH cites to no decisions in which a party used a petition for modification as a vehicle to impose an entirely new and material condition, as DISH impermissibly seeks to do here. In fact, the Commission has denied a party “the use of a petition for modification because it wanted to add a new regulatory requirement” in the underlying decision. *See, e.g.*, D.98-12-091, 1998 Cal. PUC LEXIS 897, at \*4-5.

<sup>19</sup> As DISH concedes, however, the deadline for filing an application for rehearing has long since passed. *See* Petition at 3.

<sup>20</sup> *See* Petition at 1-2, 4-6.

<sup>21</sup> *See, e.g., In re Pac. Gas & Elec. Co.*, D.96-09-045, 1996 Cal. PUC LEXIS 912 (Sept. 4, 1996) (looking to plain language of ordering paragraph to determine meaning); *In re AT&T Commc'ns of Cal., Inc.*, D.88-12-084, 1988 Cal. PUC LEXIS 887 (Dec. 19, 1988) (same).

<sup>22</sup> Merger Decision, D.20-04-008, 2020 Cal. PUC LEXIS 529, at \*60.

stating that a sunset of CDMA would be in non-compliance with this requirement.<sup>23</sup> That is because OP 6 does not require T-Mobile to maintain its CDMA network, much less dictate how long it must be maintained. OP 6 does not even include the term “CDMA” – as DISH itself admits.<sup>24</sup> Indeed, there is not a single reference to the CDMA network anywhere in the Commission’s detailed, 64-page Merger Decision. Ordinary canons of construction hold that the absence of a term necessarily means that the term was not intended to be included.<sup>25</sup>

Moreover, as the Commission has explained, relevant language must be considered as a whole and not viewed in isolation. When the 2 sentences in OP 6 are read together, it is clear that the first sentence states a general condition (*i.e.*, that the customer experience shall not be “degraded”) and the second sentence explains what T-Mobile must do to satisfy that condition (*i.e.*, maintain LTE speeds and coverage areas). The requirement regarding LTE services cannot reasonably be read to include a requirement about CDMA. Accepting DISH’s interpretation that OP 6 requires T-Mobile to continue to provide CDMA services would lead to an absurd result – one that not even DISH advocates – because it would require that the CDMA network be maintained not just for 3 years (during the migration period), but for 6 years (throughout the 5G build period as well).<sup>26</sup>

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<sup>23</sup> T-Mobile continues to maintain LTE broadband speeds and coverage areas in California at no less than that reported by each company to the FCC for their respective LTE services as of December 31, 2019, and has submitted Form 477 data to the Compliance Monitor and Commission Staff confirming this.

<sup>24</sup> *See* Petition at 7.

<sup>25</sup> *Cf. CPF Agency Corp. v. Sevel’s 24 Hour Towing Serv.*, 132 Cal. App. 4th 1034, 1049 (2005) (in context of statutory construction, “[t]he expression of some things in a statute necessarily means the exclusion of other things not expressed”) (citation omitted).

<sup>26</sup> Although carriers have different timeframes for the sunset of their CDMA networks, they are all within the next 1-2 years. AT&T has already shut down its 2G GSM network and has announced that it will sunset its 3G Network by February 2022. *See* AT&T, *Get Ready, 3G is Going Away in 2022*, <https://www.att.com/support/article/wireless/KM1324171/> (last visited May 28, 2021). Verizon recently announced that it will shut down its 3G CDMA network by December 31, 2022. *See* Mike Haberman,

The Commission’s recently-adopted Citation Program further confirms that OP 6 does not impose on T-Mobile any obligation to maintain the CDMA network.<sup>27</sup> Notably, the only potential violation of OP 6 contemplated by the Citation Program is a failure to maintain LTE broadband speeds and coverage areas.<sup>28</sup> This supports the fact that the only requirement in OP 6 was to retain LTE coverage and speeds, not to retain the CDMA network or CDMA coverage and speeds.

## **2. T-Mobile Did Not Commit to Maintain the CDMA Network Until 2023.**

DISH also contends that T-Mobile “committed” in its testimony and briefs to “maintain the CDMA network for at least three years” – *i.e.*, until July 1, 2023.<sup>29</sup> This is simply not true. As a threshold matter, once the Commission adopted the Merger Decision, the only relevant inquiry is what the Commission required of T-Mobile *in the OPs*. Importantly, however, T-Mobile never made any such commitment. Indeed, T-Mobile repeatedly emphasized and identified for the Commission the dozens of voluntary commitments it had made in connection with the merger, and that list never included any commitment concerning the continued operation of the CDMA network.<sup>30</sup>

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VERIZON, *3G CDMA Network Shut off date set for December 31, 2022*, <https://www.verizon.com/about/news/3g-cdma-network-shut-date-set-december-31-2022> (Mar. 30, 2021).

<sup>27</sup> See A.18-07-011, Resolution T-17722 Citation Program at A-6 (Feb. 11, 2021). The Citation Program delegates to CPUC Staff the authority to impose penalties on T-Mobile for violating the Merger Decision’s orders.

<sup>28</sup> See *id.* (“Failure to maintain LTE broadband speeds and coverage areas in California at no less than the speeds and coverage areas reported to the Federal Communications Commission on Form 477 by T-Mobile and Sprint for their respective LTE services as of December 31, 2019, as identified in Ordering Paragraph 6.”). The fee for such a violation is “\$100,000 per day.” See *id.* The total fine issued through this Citation Program for a single violation “shall not exceed \$25,000,000.” See *id.*

<sup>29</sup> Petition at 4.

<sup>30</sup> See A.18-07-011, Post-Hearing Reply Brief at App. 1 (May 10, 2019) (chart listing 47 specific voluntary commitments made to the CPUC, none of which pertained to the CDMA network).

To support its claim that T-Mobile committed that “the CDMA network would remain operational for at least 3 years,” DISH mischaracterizes testimony from T-Mobile’s President of Technology, Neville Ray, and statements made in T-Mobile’s briefs.<sup>31</sup> Even at face value, none of those statements supports DISH’s argument. DISH also entirely ignores the context in which those statements were made. T-Mobile will provide this important context now.

As part of its Proposed Final Judgment in 2019, the DOJ required T-Mobile to divest its 800 MHz spectrum – spectrum that supports the CDMA network.<sup>32</sup> This issue was identified in the Amended Scoping Ruling,<sup>33</sup> and some parties, including the California Public Advocates Office, claimed during the Commission’s December 2019 hearings that this spectrum divestiture would negatively affect the quality of T-Mobile’s 4G LTE service and T-Mobile’s planned 5G rollout.<sup>34</sup>

To address those questions, T-Mobile explained in its testimony and briefs that even with the divestiture, T-Mobile would be *permitted to retain the 800 MHz spectrum* for 3 years to ensure that the divestiture did not impact T-Mobile’s ability to successfully migrate customers to the T-Mobile network. But affirming that T-Mobile would have access to the spectrum used to support the CDMA network for a period of 3 years is not the same as committing to operate that network

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<sup>31</sup> See Petition at 4-6.

<sup>32</sup> That obligation was ultimately included in a final judgment approved by the court. See Final Judgment, *United States, et al. v. Deutsche Telekom AG*, No. 1:19-cv-02232-TJK, 2020 WL 2481785 at \*6 (D.D.C. Apr. 1, 2020) (“Final Judgment”) (“Divesting Defendants are ordered and directed, within three (3) years after the closing of the divestiture of the Prepaid Assets or within five (5) business days of the approval by the FCC of the transfer of the 800 MHz Spectrum Licenses, whichever is later, to divest the 800 MHz Spectrum Licenses in a manner acceptable to the United States, in its sole discretion, after consultation with the affected Plaintiff States.”).

<sup>33</sup> See A.18-07-011, Amended Scoping Ruling at 3 (Oct. 24, 2019) (“4. How does the proposed transfer of spectrum to Dish Network impact the quality and extent of New T-Mobile’s existing 4G network and its planned 6G [sic] network?”).

<sup>34</sup> See A.18-07-011, Legal Brief of the Public Advocates Office at 18-19 (Dec. 20, 2019).

for 3 additional years. DISH's argument ignores that clear – and critical – distinction, and it is simply not the case that Mr. Ray's testimony made such a commitment.

Other aspects of the record further belie DISH's claim. In particular, Mr. Ray's testimony makes clear that T-Mobile planned to migrate customers from both Sprint's CDMA and LTE networks quickly, and that it expected to *complete that migration well within 3 years*.

Ray Rebuttal Testimony at 47:5-6: "T-Mobile expects that all Sprint customers are likely to be **completely migrated within three years**."

Ray Supplemental Testimony at 124:18-28, 125:1: "That said, we are very, very confident that we will be at a **complete migration** of customers onto the New T-Mobile network **within that three-year period**. And we have, you know, a strong history of that type of work. Very recently we conducted a transaction in combination with MetroPCS which was very similar in nature and we migrated the base – actually a similar base of over 8 million customers very successfully **in actually less than three years**."

Ray Supplemental Testimony: at 13:15-18: "The divestiture commitments give us three years of continued use of the 800 MHz spectrum from the time we divest Sprint's pre-paid assets to DISH. New T-Mobile planned and still does plan to use that spectrum exclusively to support former Sprint customers during the **anticipated 3-year migration period and to complete the migration of Sprint customers before this deadline**."

DISH has no basis to claim surprise at T-Mobile's plans to sunset the CDMA network by January 2022. In addition to Mr. Ray's clear statements about customer migration identified above, DISH was an active participant in the FCC's merger proceeding. There, the FCC explicitly rejected arguments that T-Mobile should maintain its CDMA network for a longer period, concluding that "we do not require New T-Mobile to maintain the legacy CDMA network for a specific period of time."<sup>35</sup> The FCC also "agree[d] with [the merging parties] that CDMA is an older technology that will be likely phased out throughout the industry."<sup>36</sup> T-Mobile, for its part, stated that the sunset would not begin before January of 2021 to allay concerns by commenters

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<sup>35</sup> Merger Decision at 10711 ¶ 298.

<sup>36</sup> *Id.* at 10728 ¶ 339.

about not having adequate time to prepare for the shutdown.<sup>37</sup> DISH never challenged the FCC's determination that the public interest is not served by a condition requiring T-Mobile to maintain Sprint's CDMA network.<sup>38</sup>

Viewed against this backdrop, the fact that there is not a date for the sunset of the CDMA network in the CPUC record is not surprising; unlike at the FCC,<sup>39</sup> the topic was never raised during the proceeding before this Commission by DISH or anyone else. DISH had every opportunity to raise and discuss CDMA migration at the CPUC, with the DOJ and FCC, and during negotiations over the MNSA, but never did so.

**D. DISH IS IMPROPERLY SEEKING TO LEVERAGE THE CPUC PROCESS TO EVADE ITS CONTRACTUAL OBLIGATIONS UNDER THE MNSA**

Prior to the merger closing, DISH and T-Mobile executed a MNSA which expressly provides that T-Mobile can sunset the Sprint legacy network at any time following 6 months' advance notice: "T-Mobile will provide DISH with reasonable advanced notice at least six months prior to the shutdown of the Legacy Network (CDMA network) in any market."<sup>40</sup> Moreover, DISH itself proposed that 6-month notification period during negotiations with T-Mobile. There is no other limitation on T-Mobile's discretion as to the timing of the CDMA sunset.

The CPUC was made aware of this 6-month notice provision by Mr. Ray, who explained that "[w]e are also required to provide DISH with at least six-months advanced notice before we

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<sup>37</sup> *See id.*

<sup>38</sup> *See generally id.*

<sup>39</sup> *See id.* at 10711 ¶ 298.

<sup>40</sup> *See* A.18-07-011, Hearing Ex. Jt. Appl. 28C, Supplemental Testimony of Neville R. Ray on Behalf of Joint Applicants (Nov. 7, 2019) ("Ray Supplemental Testimony"), Confidential Attachment G, Annex 1 to Exhibit C of Asset Purchase Agreement, Master Network Services Agreement § 2.2(c) ("MNSA") at A-215.

shut down the legacy network.”<sup>41</sup> On October 2, 2020, T-Mobile provided nearly 15 months’ formal notice to DISH that it would sunset its CDMA network on or around January 1, 2022, to afford DISH more than ample time to transition its customers.<sup>42</sup>

The MNSA also provides: “As between the Parties, **DISH is solely responsible for the migration of Legacy Network Subscribers to the T-Mobile Network** by providing customers with a VoLTE capable device and migrating them to the T-Mobile Network before Legacy Network shutdown in each applicable Market.”<sup>43</sup> Mr. Ray also made the Commission aware of DISH’s responsibility, noting that “the transition from the 800 MHz CDMA network will begin no earlier than January 1, 2021,”<sup>44</sup> and that, “[a]s to the prepaid Sprint customers that are divested to DISH, the retail terms and conditions of service post-divestiture will be a **matter for DISH, not new T-Mobile.**”<sup>45</sup> Notwithstanding DISH’s clear contractual obligation to migrate its customers, DISH has largely sat on its hands in the more than 7 months since it received notice of the CDMA sunset and has not prioritized work on the migration. As the MNSA confirms, however, it is

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<sup>41</sup> See Ray Supplemental Testimony at 19:15-20:8. Although Mr. Ray’s testimony about the notice provision had initially been marked as confidential, it is now public information because it was referenced in correspondence between T-Mobile and DISH to FCC Acting Chairwoman Rosenworcel regarding the present dispute. See Letter from K. Ham, Senior Vice President – Government Affairs, T-Mobile, to J. Rosenworcel, Acting Chairwoman, FCC, et al. (Apr. 11, 2021), <https://ecfsapi.fcc.gov/file/10411042233063/Letter%20to%20Acting%20Chairwoman%20Rosenworcel%20-%20Final.pdf>; Letter from J. Blum, Executive Vice President – External & Legislative Affairs, DISH, to J. Rosenworcel, Acting Chairwoman, FCC, et al. (Apr. 14, 2021), [https://ecfsapi.fcc.gov/file/10414915019996/2020-04-14%20DISH%20TMO%20CDMA%20Resp%20\(FINAL\).pdf](https://ecfsapi.fcc.gov/file/10414915019996/2020-04-14%20DISH%20TMO%20CDMA%20Resp%20(FINAL).pdf) (“DISH FCC Letter”).

<sup>42</sup> See Attachment B, Letter from D. Thygesen, Vice President – Wholesale and Platform Operations, T-Mobile, at 1 (Oct. 2, 2020) (“DISH CDMA Notice”).

<sup>43</sup> MNSA § 2.2(c) (emphasis added).

<sup>44</sup> See A.18-07-011, Hearing Ex. Jt. Appl. 28C, Rebuttal Testimony of Neville R. Ray, Executive Vice President and Chief Technology Officer, T-Mobile USA, Inc., on Behalf of T-Mobile USA, Inc. at 47:9-10, as updated in Att. B to Ray Supplemental Testimony (“Ray Rebuttal Testimony”). See also Ray Supplemental Testimony at 18:26-19:3; *id.* at 19:15-20:8.

<sup>45</sup> See Ray Rebuttal Testimony at 18:26-28 (emphasis added).



DISH's obligation – not T-Mobile's – to devote the resources necessary to comply with its commitments and to timely transition its customers.

DISH is misusing this proceeding to try and get out of its contractual obligations to migrate CDMA customers. Consistent with established precedent, however, the Commission will not adjudicate such contract disputes.<sup>46</sup> Indeed, the Commission reiterated this general rule during the course of the underlying merger proceeding.<sup>47</sup> As the Commission has explained, “there is longstanding Commission precedent affirming the sanctity of contracts, once approved.”<sup>48</sup> This long-held principle must apply here, where the parties negotiated and executed an agreement nearly two years ago.

## **E. THE RELIEF DISH SEEKS CONFLICTS WITH FEDERAL LAW**

### **1. The Requested Relief Runs Afoul of the Final Judgment and Is Preempted by the FCC Merger Order.**

Under established principles of conflict preemption, state law is preempted where: (1) a party cannot comply with both state and federal law; or (2) state law stands as an obstacle to the

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<sup>46</sup> See, e.g., *Blue Casa Commc'ns v. Pac. Bell Tel. Co.*, D.09-03-016, 2009 Cal. PUC LEXIS 149, at \*10 (Mar. 12, 2009) (“[T]he Commission is not the appropriate forum in which to settle a private contract dispute.”); *Downs v. Citizens Water Resources*, D.02-10-052, 2002 Cal. PUC LEXIS 680, at \*5 (Oct. 24, 2002) (“[T]he ‘Commission is not a body charged with enforcement of private contracts.’”) (quoting *Atchinson, T & S.F.R. Co. v. R.R. Comm’n of Cal.*, 173 Cal. 577, 582 (1916)); *Lakeland Util. Conservation, Inc. v. San Diego Gas & Elec. Co.*, D.01-03-050, 2001 Cal. PUC LEXIS 187, at \*5 (Mar. 27, 2001) (“As a general rule, this Commission does not adjudicate contract disputes merely because one party is a public utility.”).

<sup>47</sup> See Merger Decision, D.20-04-008, Cal. PUC LEXIS 529, at \*48-49 (“[W]e will not adjudicate disputes between the contracting parties, leaving that matter to the Superior Court.”).

<sup>48</sup> *Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development*, D.19-03-012, 2019 Cal. PUC LEXIS 152, at \*41-42 (Mar. 28, 2019). The California Supreme Court has echoed this rule, affirming that the Commission may not adjudicate contract disputes absent express authorization by the Legislature. “This rule is based on Article VI of the California Constitution, which assigns purely judicial functions to the courts.” D.01-03-050, 2001 Cal. PUC LEXIS 187, at \*5. See also D.19-03-012, 2019 Cal. PUC LEXIS 152, at \*9 (denying petition where party “asks us to change the terms of a contract through a petition for modification”).

accomplishment and execution of federal law.<sup>49</sup> The remedy requested in DISH's Petition runs afoul of both of those prongs, as it would put T-Mobile at risk of violating the Final Judgment and would undermine the FCC's determination that the public interest would *not* be served by requiring T-Mobile to continue operating the CDMA network. In effect, DISH is asking the Commission to contradict both a federal judicial decree and a federal agency's order.

Under the Final Judgment, T-Mobile is required to decommission all unnecessary cell sites promptly, and to make those sites available to DISH as they are decommissioned.<sup>50</sup> This Commission has no authority to take any action that could interfere with T-Mobile's obligations to comply with the Final Judgment.

Nor should the Commission accept DISH's invitation to contradict and undermine the FCC's express public interest determinations in its order approving the T-Mobile/Sprint merger.<sup>51</sup> The FCC squarely held that "it is not in the public interest to require a company to devote their limited resources to maintaining an outdated technology when those resources could instead be directed to bringing to American consumers faster, higher-quality and more reliable services."<sup>52</sup> An order purporting to now require T-Mobile to maintain the CDMA network in California for any extended period of time would conflict with and impede the FCC's policy judgment, and the relief DISH seeks is therefore preempted for that additional reason.

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<sup>49</sup> See, e.g. *Metropoulos Telecomm., Inc. v. Glob. Crossing Telecomms., Inc.*, 423 F.3d 1056, 1072 (9th Cir. 2005), *aff'd*, 550 U.S. 45 (2007).

<sup>50</sup> See Final Judgment §§ IV.C.1, IV.C.5.

<sup>51</sup> See FCC Merger Order, 34 FCC Rcd. at 10728 ¶ 339 (rejecting requests to condition approval on T-Mobile maintaining operation of the CDMA network for a specific period of time and determining such a requirement was not in the public interest and a misuse of limited resources better put to deploying more advanced services).

<sup>52</sup> *Id.*

## **2. The Requested Relief is Expressly Preempted by the Communications Act.**

The relief sought by DISH not only risks placing this Commission on a collision course with the U.S. District Court for the District of Columbia and the FCC for the reasons explained above, it also would be expressly preempted by the federal Communications Act (“Act”) on 2 independent grounds.

First, as T-Mobile has consistently pointed out, Section 332(c)(3)(A) of the Act deprives the Commission of jurisdiction to require approval for, or to impose mandatory conditions on, a wireless merger transaction.<sup>53</sup> Accordingly, any new merger condition imposed by the Commission in response to DISH’s Petition would similarly be preempted as impermissibly intruding upon the FCC’s exclusive authority over market entry for wireless providers.

Second, the relief requested by DISH is also preempted because forcing T-Mobile to maintain an obsolete CDMA network would impermissibly regulate the “modes and conditions” under which T-Mobile may “offer[] service” – one of “the very areas reserved to the FCC.”<sup>54</sup> Any order requiring T-Mobile to maintain the CDMA network would impermissibly force T-Mobile to continue to operate cell towers and other wireless infrastructure that it would otherwise decommission or upgrade to 5G-compatible uses.

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<sup>53</sup> See 47 U.S.C. § 332(c)(3)(A).

<sup>54</sup> *Bastien v. AT&T Wireless Servs., Inc.*, 205 F.3d 983, 989 (7th Cir. 2000) (“The statute makes the FCC responsible for determining the number, placement and operation of the cellular towers and other infrastructure.”). See also *In re Apple iPhone 3G Prod. Liability Litig.*, 728 F. Supp. 2d 1065, 1071 (N.D. Cal. 2010) (“[W]here the relief sought would ‘alter the federal regulation of,’” among other things, wireless service “coverage,” the claims are preempted under *Bastien*).

**F. BOOST CUSTOMERS WILL BE HARMED BY BEING FORCED TO REMAIN ON THE INCREASINGLY OBSOLETE CDMA NETWORK**

**1. CDMA Is an Outdated Technology That Does Not Meet Consumers' Needs.**

CDMA is decades old and offers speeds of only 1-3 Mbps, a last-century equivalent of dial-up Internet.<sup>55</sup> It suffers from higher latency and limited capacity, and it does not support mobile applications in wide use today. CDMA also lacks the full 9-1-1 geolocation capabilities of 4G/5G networks, which means that CDMA customers remain less protected in the event of an emergency.<sup>56</sup>

DISH is seeking to leave its Boost customers on this obsolete and deteriorating technology. These customers cannot get broadband on CDMA, and DISH's requested relief would leave them trapped on the wrong side of the Digital Divide for an additional year and a half.<sup>57</sup> As the CPUC itself noted in the Merger Decision, a world in which only some have access to the "exponentially higher speeds and data-carrying capacities" of 5G "threaten[s] to expand even wider the 'digital divide' that separates the haves from the have-nots of the digital world."<sup>58</sup>

DISH's own website for Boost recognizes the significant benefits customers stand to gain by migrating to the T-Mobile network, noting that the T-Mobile network:

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<sup>55</sup> See Attachment C, Declaration of Ankur Kapoor in Support of T-Mobile's Response to DISH's Petition to Modify ¶ 5 ("Kapoor Decl."). CDMA, unlike LTE and 5G, cannot provide TeleHealth, remote learning or video streaming, and even Internet browsing, social media, and movie downloads are very slow to load. *See id.*

<sup>56</sup> CDMA provides 50-meter location accuracy only 70% of the time, and only 20% of the time when the Assisted Global Navigation Satellite System is not available. *See id.* ¶ 6.

<sup>57</sup> While it is true that Boost customers, on their own initiative, could seek to self-migrate by affirmatively requesting a SIM card or 4G/5G replacement handset, this is unlikely to happen if DISH does not provide consumer notifications or consumer education or offer the handsets under terms that incentivize and facilitate customer migration onto T-Mobile's network.

<sup>58</sup> Merger Decision, D.20-04-008, Cal. PUC LEXIS 529, at \*9.

offers a stronger signal, more coverage and faster speeds! The 4G LTE signal is strong and reliable, covering 99% of Americans. You'll experience faster upload and download speeds, and you'll be able to talk and surf the web at the same time!<sup>59</sup>

Boost's website also states that it is "dedicated to ensuring [its] customers have the best service possible, and transitioning to our new Expanded Data Network is the best way to do that."<sup>60</sup> It is hard to reconcile these statements with DISH's present request to keep Boost subscribers on the obsolete CDMA network for an additional 18 months. DISH should back up this promotional talk, spend the necessary money, and take all other actions needed to migrate its customers to the new T-Mobile network as soon as possible to allow them to enjoy the benefits Boost recognizes and touts to its existing and prospective customers - as DISH committed to do. DISH simply has to start seriously employing the well-established industry steps for technology transitions, which include SIM card changes, phone replacement promotions, outreach to customers, and free phones to incentivize upgrades to the 4G/5G network.<sup>61</sup>

## **2. Sunsetting the CDMA Network Allows T-Mobile to Rapidly Deploy Its 5G Network and Realize the Significant Consumer Benefits Underpinning the Merger Decision.**

DISH claims that the CPUC ordering T-Mobile to delay the sunset of the legacy Sprint CDMA network for an additional year and a half "will not impact T-Mobile's 5G deployment."<sup>62</sup> DISH, in a pattern pervading its Petition, cherry-picks testimony that T-Mobile "has no plans to utilize its 800 MHz spectrum – which is used for CDMA operations – for any future 5G deployment,"<sup>63</sup> and asks the Commission to leap to a wholly incorrect conclusion. Contrary to

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<sup>59</sup> See Attachment D, BOOST MOBILE, *CDMA Network Migrations FAQs*, <https://www.boostmobile.com/support/faq/plans-services/cdma-migration.html> (last visited May 26, 2021).

<sup>60</sup> *Id.*

<sup>61</sup> See *infra* Section G.

<sup>62</sup> Petition at 9.

<sup>63</sup> *Id.*

DISH's claims, delaying the CDMA sunset would have a significant effect on T-Mobile's ability to capture merger synergies required to fund its 5G network and refarm spectrum required for its plan to deliver high quality 5G services in California and meet related conditions imposed by this Commission.

There are several significant adverse effects on 5G deployment that would clearly and quickly arise from a requirement to maintain the CDMA network. First, T-Mobile's funding of the \$40 billion network investment nationally and **[Begin Highly Confidential – Attorneys' Eyes Only ("BHC-AEO")]** REDACTED **[End Highly Confidential – Attorneys' Eyes Only ("EHC-AEO")]** investment in the State of California is highly dependent on rapid cost savings from the elimination of duplicative and unnecessary network elements.<sup>64</sup> This is particularly true for the CDMA network, which is extremely expensive to maintain. It is obsolete, costly, and replacement parts for CDMA components are no longer being made.<sup>65</sup> Merger synergies make possible the expansion and improvement of T-Mobile's 5G network,<sup>66</sup> and sunseting the CDMA network is a significant part of those essential synergies. T-Mobile's current estimate is that a delay in the CDMA sunset to July of 2023 would cost the company around **[BHC-AEO]** REDACTED **[EHC-AEO]** in lost merger synergies nationwide that would have supported 5G deployment.<sup>67</sup> These costs result from, among other things, the need to renew site leases that could otherwise be decommissioned; backhaul costs; labor, utilities, and maintenance; conducting redundant site visits; and core CDMA network costs.<sup>68</sup> The added cost of maintaining an obsolete network could

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<sup>64</sup> See Ray Supplemental Testimony at 20:17-21:6, 37:26-30, 52:28-53:2. See also Merger Decision, D.20-04-008, 2020 Cal. PUC LEXIS 529, at \*29.

<sup>65</sup> See Kapoor Decl. ¶¶ 5-6.

<sup>66</sup> See Ray Rebuttal Testimony at 47:5-8, 52:28-53:2.

<sup>67</sup> See Kapoor Decl. ¶ 10.

<sup>68</sup> See *id.*

significantly impact T-Mobile’s ability to rapidly deploy next-generation 5G networks to the detriment of consumers. Public Utilities Code § 321.1 requires the Commission to “assess the consequences of its decisions, *including economic effects*,”<sup>69</sup> and to “take all necessary and appropriate actions to assess the economic effects of its decisions.”<sup>70</sup> Any rational cost/benefit analysis will conclude that spending resources to prolong an obsolete network and not devoting them to a world class 5G network is not in the interest of California consumers.

Second, sunseting the CDMA network in the January 2022 timeframe is not an event occurring in isolation from T-Mobile’s overall 5G network build. Rather, it is a critical component of a detailed network transition plan years in the making that will shift the resources, network infrastructure, and spectrum needed to keep the CDMA network operational towards enhancing and accelerating T-Mobile’s 5G deployment.<sup>71</sup> Many of the towers currently carrying CDMA equipment need to be upgraded to support 5G.<sup>72</sup> Delaying the removal of the CDMA equipment in California means that T-Mobile may have to delay installation of new 5G equipment (because, for example, there may not be space on the tower and in the equipment shelter for both 5G and CDMA equipment);<sup>73</sup> this in turn potentially impacts T-Mobile’s ability to deliver the world leading 5G network that its commitments are designed to ensure.

Third, delaying the sunset of the CDMA network would delay access to spectrum that will be used to support 5G services. 800 MHz spectrum is not the only spectrum used to provide

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<sup>69</sup> Pub. Util. Code § 321.1(a) (emphasis added).

<sup>70</sup> *Id.* § 321.1(b).

<sup>71</sup> See Ray Rebuttal Testimony at 47:5-8 (“By undertaking this rapid migration [off of the CDMA network], New T-Mobile will drive synergies to our existing LTE network and free up valuable spectrum for 5G use in a more rapid fashion.”).

<sup>72</sup> See Kapoor Decl. ¶ 9.

<sup>73</sup> See *id.*

CDMA. In fact, PCS spectrum comprises the significant majority of spectrum being used to provide CDMA.<sup>74</sup> Delaying the CDMA sunset would impact the re-farming of this PCS spectrum to support 5G services.<sup>75</sup>

Fourth, forcing T-Mobile to maintain an antiquated network not only harms consumers using that network but also diverts resources away from building out the next-generation 5G network. As the CPUC recognized, “provid[ing] a robust 5G service network” is in the public interest.<sup>76</sup> By sunseting the CDMA network, T-Mobile can re-deploy freed-up resources to accelerate and enhance its 5G deployment and provide next-generation service to California consumers.

Finally, in reliance on the Merger Decision, T-Mobile has made significant investments in 5G deployment and has been actively migrating customers off its CDMA network. As discussed above, pursuant to the parties’ MNSA, T-Mobile provided DISH with nearly 15 months’ notice of the CDMA sunset in October 2020. Nevertheless, DISH waited nearly 7 months to bring its Petition requesting a new condition that the CDMA network be maintained until 2023. In the meantime, T-Mobile has been carefully abiding by the terms of the Merger Decision as issued in April 2020. Under these circumstances, it would be particularly unfair and unduly prejudicial for

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<sup>74</sup> See *id.* ¶ 8. See also A.18-07-011, Hearing Exh. Jt. Appl.2C, Rebuttal Testimony of G. Michael Sievert, President and Chief Operating Officer, T-Mobile USA, Inc., on Behalf of T-Mobile USA, Inc. at Att. 2B at 194 (Jan. 29, 2019) (Joint Opposition of T-Mobile US, Inc. and Sprint Corporation, Reply Declaration of John C. Saw, Chief Technology Officer, Sprint Corporation) (noting that “Sprint must continue to devote its 800 MHz and 1.9 GHz spectrum to our 4G LTE and 3G CDMA networks”). While this portion of Mr. Sievert’s testimony notes Sprint’s use of PCS spectrum to support its CDMA network, the chart included in Mr. Ray’s Supplemental Testimony regarding the merged entities spectrum holdings and refarming inadvertently did not show PCS spectrum as being used for CDMA. See Ray Supplemental Testimony at 10-11.

<sup>75</sup> See Kapoor Decl. ¶ 8. Ironically, there also is a potential impact on DISH’s own 5G network build commitments, as some of the towers that DISH will acquire would not be available for its use in the original timeframe.

<sup>76</sup> Merger Decision, D.20-04-008, 2020 Cal. PUC LEXIS 529, at \*49.



the Commission to make such a drastic change to the Merger Decision at such a belated juncture. Moreover, doing so would violate basic principles of due process.

**3. DISH Has Financial Incentives for Delaying the CDMA Sunset That Are Contrary to the Best Interests of Boost Customers.**

DISH has a clear overarching objective of avoiding the costs of handset upgrades. DISH seeks to defer the CDMA sunset to benefit from the natural churn among prepaid customers that will result in many of its CDMA customers buying compatible phones on their own or moving to other providers. In negotiating the MNSA with T-Mobile, DISH assumed a contractual obligation to cover the costs of migrating its customers and consented to T-Mobile's ability to sunset the CDMA network upon 6 months' advance notice.<sup>77</sup> DISH, for self-interested pecuniary reasons, now seeks intervention by this Commission to evade these obligations and to save costs without regard to the effects on Boost's CDMA customers.

**G. DISH CAN SEAMLESSLY AND TIMELY MIGRATE BOOST CUSTOMERS**

**1. The Tools for DISH to Timely Migrate Its CDMA Customers Are Well Known and Readily Available.**

T-Mobile has used well-established tools to successfully migrate its CDMA customers, and there is no reason why DISH cannot use similar tools to migrate its much smaller Boost customer base without delay. For example, for Sprint customers as well as new customers trading in a CDMA mobile phone, T-Mobile is offering a 5G smartphone for free.<sup>78</sup> In addition, T-Mobile is offering CDMA customers who are upgrading their devices access to the same or better plans

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<sup>77</sup> See *supra* Section D.

<sup>78</sup> See T-MOBILE, Press Release, *T-Mobile's Next Un-carrier Move: #5GforAll* (Apr. 7, 2021), <https://www.t-mobile.com/news/un-carrier/t-mobiles-next-un-carrier-move-5gforall>. See also Attachment E, Declaration of Max Caballero-Vieyra in Support of T-Mobile's Response to DISH's Petition to Modify ¶ 11 ("Caballero-Vieyra Decl.").

as they have today, with 5G service provided at no extra charge.<sup>79</sup> T-Mobile has begun a robust direct marketing campaign and is providing “advance notice to customers no less than 180 days before the CDMA sunset in any area.”<sup>80</sup> T-Mobile has a detailed plan for migrating the Assurance Lifeline customers from the Sprint network to the T-Mobile network, which includes free phones, a timeline for migration, and customer messaging. This plan has been presented to Commission LifeLine Staff, which has approved the customer messaging. Using such tools, T-Mobile is on schedule to migrate all of its CDMA customers before the CDMA sunset in January 2022.<sup>81</sup>

**2. There Is No Device Shortage and No Legitimate Reason DISH Cannot Migrate Its Customers in the Contractually Agreed-Upon Timeframe.**

DISH, on the other hand, now contends that consumer harms might arise because of the “complexities involved in a migration of this scale” and that Boost’s CDMA customers will lose service because these “complexities” are impediments to its ability to migrate these customers in time for a January 2022 sunset.<sup>82</sup> DISH also misleadingly claims that the CDMA sunset will “disrupt service” for approximately **[Begin Highly Confidential DISH–T-Mobile Outside Counsel Only (“BHCD-TOCO”)] REDACTED [End Highly Confidential DISH–T-Mobile Outside Counsel Only (“EHCD-TOCO”)]** consumers in California.<sup>83</sup> Setting aside the fact that the “disruption” is a transformative improvement in service, DISH does not provide information about either the number of those consumers that actually need replacement handsets (as opposed to a simple SIM card change) or the rate at which the number of CDMA customers remaining on

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<sup>79</sup> Caballero-Vieyra Decl. ¶ 10.

<sup>80</sup> *Id.* ¶ 9.

<sup>81</sup> *See id.* ¶ 8.

<sup>82</sup> Petition at 9.

<sup>83</sup> *Id.* at 2.

the obsolete network has declined since DISH acquired Boost and will continue to decline each month going forward notwithstanding DISH's failure to take steps to promote the migration.

DISH provides no facts to support any of these sweeping assertions. Instead, it provides a misleading narrative about what the transition entails and its ability to migrate Boost customers. For example, DISH has not provided any evidence regarding key issues needed to assess the merits of its Petition, such as: (1) the number of CDMA handsets in California requiring replacement versus those requiring only a SIM card swap; (2) a list of the specific handset manufacturers DISH has contacted to secure replacement handsets, the costs of those handsets, when such contact was made, and the results of those efforts; and (3) promotions DISH has offered to migrate customers from CDMA onto the T-Mobile Network, including the start dates, duration, and steps taken to communicate the promotions to customers. In short, DISH has not met its burden of showing that there is any basis for the CPUC to investigate supposed harms to California customers, let alone whether such alleged harms arise from T-Mobile's CDMA network sunset rather than DISH's own inaction.

Nor has DISH exhibited the behavior of a company committed to serving Boost customers or facing real challenges in doing so. For example, T-Mobile has implemented or offered to implement numerous measures to aid DISH's migration of Boost CDMA customers. To date, DISH has either refused or underutilized the assistance. For instance, T-Mobile offered to implement a low-cost VoLTE/MOCN solution to extend the life of an estimated very large number of handsets (based on T-Mobile forecasts, assumptions, and projections) by an additional 6 months; DISH declined this offer.<sup>84</sup> T-Mobile also furnished DISH with the unique capability to

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<sup>84</sup> Caballero-Vieyra Decl. ¶ 15.

migrate Boost customers to the new T-Mobile network using widely available VoLTE-compatible phones; DISH subsequently underutilized the capability.<sup>85</sup>

T-Mobile also has repeatedly offered to assist DISH in securing handsets, assuming a problem actually exists.<sup>86</sup> Specifically, T-Mobile contacted DISH on March 31, 2021, to offer assistance to DISH with procuring handsets and inquiring generally about DISH’s handset needs.<sup>87</sup> In a May 7, 2021 letter, T-Mobile reiterated its continued willingness to work with DISH to find ways to assist it with securing sufficient handsets to transition Boost’s CDMA customers onto the T-Mobile network.<sup>88</sup> On May 11, 2021, T-Mobile again reached out to DISH to reiterate the offer of assistance with respect to securing handsets.<sup>89</sup> To date, DISH has not availed itself of such help, suggesting that such assistance is not actually needed.<sup>90</sup> Therefore, DISH cannot logically assert that a shortage of compatible handsets impairs its ability to timely migrate its customers.

In sum, Boost customers are only at risk of losing service *if DISH chooses to evade its contractual obligation to supply them with upgraded handsets or SIM cards*. DISH’s false narrative is illustrated by the following comparison of its claims with the facts:

<b>Claim:</b>	DISH implies that, given the large number of Boost CDMA customers, COVID-19, chip shortages, and LG leaving the handset business, there are insufficient handsets available to complete the requisite number of upgrades. <sup>91</sup>
<b>Fact</b>	The following chart contains T-Mobile’s best estimates regarding the projected number of Boost handsets in California that will need to be either replaced or upgraded via SIM swap at EOY 2021. T-Mobile counsel received access to the

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<sup>85</sup> *Id.* ¶ 16.

<sup>86</sup> *See id.* ¶ 17.

<sup>87</sup> *See id.*

<sup>88</sup> *See id.*

<sup>89</sup> *See id.*

<sup>90</sup> *See id.*

<sup>91</sup> *See* Petition, Public Declaration of Stephen Stokols in Support of Petition to Modify ¶ 10. *See also* Petition at 9; DISH FCC Letter at 3.

number of CDMA customers DISH claims to have as of the date of its Petition, used that number to derive the rate that Boost CDMA devices have decreased since divestiture, and calculated a projection for EOY 2021 using the same rate of change.

**Boost Customers on Legacy Sprint CDMA Network**<sup>92</sup>

Device Type	Divestiture/ June 2020 (from T-Mobile Data) <sup>93</sup>	April 2021 (Total from DISH) <sup>94</sup>	EOY 2021 (T-Mobile estimates) <sup>95</sup>
	[BHC-AEO]	BHCD-TOCO]	[BHCD-TOCO]
CDMA-only (requires replacement)	REDACTED	REDACTED	REDACTED
Upgradeable via SIM swap	REDACTED	REDACTED	REDACTED
Total not migrated to T-Mobile	REDACTED	REDACTED	REDACTED
	[EHC-AEO]	[EHCD-TOCO]	[EHCD-TOCO]

<sup>92</sup> Certain information in this chart and accompanying footnotes is marked Highly Confidential Attorneys Eyes Only (“HC-AEO”) and is highlighted in blue. This information is confidential to T-Mobile and will be shared with Commission Staff and attorneys/authorized party representatives who have executed nondisclosure agreements with T-Mobile in this proceeding. Other information is confidential to DISH and is marked Highly Confidential DISH–T-Mobile Outside Counsel Only (“HCD-TOCO”) and highlighted in grey. This information is confidential to DISH and was shared with T-Mobile outside counsel pursuant to the parties’ agreement; this information will be shared only with Commission Staff.

<sup>93</sup> In DISH’s unredacted Petition, it stated that approximately [BHCD-TOCO] REDACTED [EHCD-TOCO] Boost customers located in California have CDMA devices as of the date of DISH’s Petition. *See* Petition at 2. T-Mobile has used legacy Sprint CDMA device data available to it at the time of divestiture to calculate estimates of the percentage of these devices that require replacement vs. those that require a SIM upgrade. *See* Attachment F, Declaration of Brian Schmidt in Support of T-Mobile’s Response to DISH’s Petition to Modify ¶ 5 (“Schmidt Decl.”). This data reflects that at the time of divestiture, [BHC-AEO] REDACTED [EHC-AEO] of those devices were CDMA-only and the remaining [BHC-AEO] REDACTED [EHC-AEO] would be upgradeable via SIM card swap.

<sup>94</sup> Applying the percentages discussed in footnote 93 to the number of April 2021 Boost CDMA customers provided by DISH results in [BHCD-TOCO] REDACTED [EHCD-TOCO] CDMA devices needing replacement. [BHCD-TOCO] REDACTED [EHCD-TOCO] would be upgradeable via SIM card swap.

<sup>95</sup> For the EOY 2021 calculation, T-Mobile assumed that the average monthly rate of reduction in Boost CDMA handsets between the time of divestiture and April 2021 would remain the same through the end of the year. Specifically, between June 2020 and April 2021, the number of Boost CDMA handsets decreased by approximately [BHCD-TOCO] REDACTED [EHCD-TOCO] handsets, or approximately [BHCD-TOCO] REDACTED [EHCD-TOCO] per month. Assuming the number of Boost CDMA handsets continued to decrease at the same rate, the total number of Boost CDMA handsets at EOY 2021 would be reduced by an additional [BHCD-TOCO] REDACTED [EHCD-TOCO] devices. Subtracting that number from [BHCD-TOCO] REDACTED [EHCD-TOCO] results in [BHCD-TOCO] REDACTED [EHCD-TOCO] remaining Boost CDMA handsets in California that will need replacement or upgrade at EOY 2021. Assuming that [BHC-AEO] REDACTED [EHC-AEO] of these remaining handsets are CDMA-only, that would mean [BHCD-TOCO] REDACTED [EHCD-TOCO] handsets would need replacement. The remaining [BHCD-TOCO] REDACTED [EHCD-TOCO] handsets can be made compatible with the T-Mobile network through a simple SIM card swap.

These EOY projections above likely greatly overstate the number of Boost handsets in California that will remain incompatible with T-Mobile's 4G/5G network, because they assume that DISH will not use industry-standard tools such as conducting promotions or engaging in advertising designed to incentivize its customers to migrate to compatible devices.

We also estimate that approximately [BHCD-TOCO] REDACTED [EHCD-TOCO] of Boost California CDMA customers are upgradeable with SIM swaps and that, as explained below, there are plenty of SIMs. In addition, there are ample compatible handsets to more than meet DISH's needs.<sup>96</sup>

T-Mobile confirmed with a leading device manufacturer that there are no issues fulfilling T-Mobile's projected allocation for the rest of the year on a timely schedule for the CDMA sunset.<sup>97</sup> Significantly, the allocation exceeds the amount of handsets required by T-Mobile's immediate needs by a significant amount and, while the manufacturer could not comment on its ability to meet the needs of any other customer such as DISH, it is logical that a reduction in demand by one customer would free resources to meet new demand from another customer. Therefore, LG's exit from the market has no bearing on DISH's ability to procure sufficient handset to migrate its customers. DISH does not appear to raise handset pricing as an impediment, but it bears noting that [BHC-AEO] REDACTED [EHC-AEO].<sup>98</sup> DISH assumed the responsibility for covering those costs for its Boost customers.<sup>99</sup> Thus, DISH cannot reasonably assert that a shortage of compatible handsets impairs its ability to timely migrate its customers.

**Claim:** Some Boost customers hold devices that will require some sort of affirmative technology change like a SIM swap and this might be complex.<sup>100</sup>

**Facts:** As explained above, T-Mobile estimates that approximately [BHCD-TOCO] REDACTED [EHCD-TOCO] of the Boost CDMA handsets in California can be made compatible with the T-Mobile 4G/5G network with a SIM card swap.<sup>101</sup> So, DISH is correct in this respect.

However, far from being complex, the Boost website demonstrates this is a simple process: [How to SIM Swap | Boost Mobile](#).<sup>102</sup> In fact, T-Mobile has many more such customers and is not encountering difficulties moving them over with a SIM

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<sup>96</sup> See Caballero-Vieyra Decl. ¶¶ 5-7.

<sup>97</sup> See *id.* ¶ 5.

<sup>98</sup> See *id.* ¶ 12.

<sup>99</sup> See MNSA § 2.2(c).

<sup>100</sup> See Petition at 8.

<sup>101</sup> See *supra* note 93 (citing Schmidt Decl. ¶ 5).

<sup>102</sup> See BOOST MOBILE, *How to Swap Your Boost Mobile Phone SIM Card*, <https://www.boostmobile.com/about/sim-card-swap> (last visited May 28, 2021).

card swap.<sup>103</sup> In addition, there is no indication that DISH is suggesting that there is any problem securing SIM cards. As noted above, they are widely available.

**Claim:** Boost’s only means of contacting a customer may be the phone itself, but it could be temporarily unavailable and Boost has no consistent way to contact that customer.<sup>104</sup>

**Facts:** This is a false assertion. Obviously, dialing or texting a customer’s phone number is an easy and reliable way to reach the customer. And if the phone is “temporarily unavailable,” DISH can call again, or leave a voice or text message that the customer will receive the next time they use the phone.<sup>105</sup> T-Mobile utilized this practice in transitioning its nearly 9 million MetroPCS customers without problems.<sup>106</sup>

Notwithstanding the documented availability of replacement handsets, if DISH nonetheless remains seriously concerned about securing 4G/5G handsets for Boost’s California customers, T-Mobile once again reaffirms its continued willingness to assist DISH in acquiring the 4G and/or 5G capable handsets that are compatible with the T-Mobile network in sufficient quantities to meet Boost’s California needs and in a timeframe consistent with meeting the January 1, 2022 sunset date for the CDMA network.<sup>107</sup> Specifically, the handsets would include a mix of 4G and 4G/5G devices to be used solely for the purpose of replacing the CDMA handsets of Boost’s California customers that are incompatible with the T-Mobile network. T-Mobile would work with DISH, as appropriate, to secure this supply for DISH to purchase and do so at no charge for its assistance.<sup>108</sup>

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<sup>103</sup> See Caballero-Vieyra Decl. ¶ 12.

<sup>104</sup> See Petition at 9.

<sup>105</sup> If the customer does not use the phone a single time between now and January 2022, it is safe to assume that the customer is no longer a Boost customer, and does not need migration.

<sup>106</sup> See Kapoor Decl. ¶ 11.

<sup>107</sup> See Caballero-Vieyra Decl. ¶ 18.

<sup>108</sup> *Id.*

In sum, the facts show that DISH has the tools to accomplish a timely transition of its Boost CDMA customers in California. There is nothing complex about this process and the means to executing such a migration are tried, true, and well-known in the industry.

### III. CONCLUSION

For the foregoing reasons, DISH's Petition should be denied. Rather than modifying the Merger Decision to satisfy DISH's procedurally and substantively flawed request, the Commission should admonish DISH<sup>109</sup> to move forward with the migration of Boost customers onto the T-Mobile network, as explicitly required under the parties' MNSA. The public interest benefits of DISH migrating its customers to T-Mobile's superior 4G/5G network far outweigh those related to T-Mobile's retention of the CDMA network. If DISH's attempt to leverage the regulatory system fails, T-Mobile believes that DISH has the incentive and ability to move forward to migrate customers, consistent with its contractual obligations. However, even if DISH shirks from its responsibilities, CDMA customers will not be harmed because they have other options to obtain 4G (or 5G) handsets and prepaid service at competitive rates.<sup>110</sup>

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<sup>109</sup> DISH Wireless LLC d/b/a Boost Mobile is registered with the Commission as a commercial mobile radio service reseller (utility type CER) and is assigned utility number 4533.

<sup>110</sup> For example, Cricket is offering several models of 4G smartphones for \$19.99 and \$29.99 with activation of a \$30/month plan. See CRICKET, *Prepaid Cell Phones*, <https://www.cricketwireless.com/cell-phones/smartphones> (last visited May 28, 2021). TracFone has a number of new 4G smart phones for \$29.99 and refurbished phones can be purchased for as low as \$9.99, with monthly plans including data as low as \$15.00 per month with autopay. See TRACFONE, *Phones*, <https://shop.tracfone.com/shop/en/tracfonestore/phones> (last visited May 28, 2021). AT&T is offering new 4G smartphones for as low as \$35 with the activation of a new prepaid account. See AT&T, *Shop for prepaid phones*, <https://www.att.com/buy/prepaid-phones> (last visited May 28, 2021). And as noted above, T-Mobile currently has a promotion where it is providing customers who trade in any phone a free 5G phone, with plans as low as \$15.00 a month. See T-MOBILE, Press Release, *T-Mobile's Next Un-carrier Move: #5GforAll* (Apr. 7, 2021), <https://www.t-mobile.com/news/un-carrier/t-mobiles-next-un-carrier-move-5gforall>. See also T-MOBILE, *T-Mobile Connect*, <https://prepaid.t-mobile.com/prepaid-plans/connect> (last visited May 28, 2021).



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Respectfully submitted,

*/s/ Suzanne Toller*

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*Attorneys for T-Mobile USA, Inc.*

May 28, 2021

**Attachment A**

Email from M. Nakahara, Senior Legal Analyst, Commission Docket Office  
(Apr. 28, 2021)

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**From:** Nakahara, Martin M. <[martin.nakahara@cpuc.ca.gov](mailto:martin.nakahara@cpuc.ca.gov)>  
**Sent:** Wednesday, April 28, 2021 3:24 AM  
**To:** Nakahara, Martin M. <[martin.nakahara@cpuc.ca.gov](mailto:martin.nakahara@cpuc.ca.gov)>  
**Cc:** Jacobson, Kristin <[kristin.jacobson@dlapiper.com](mailto:kristin.jacobson@dlapiper.com)>; Pau, Judy <[judypau@dwt.com](mailto:judypau@dwt.com)>  
**Subject:** Petition to Reopen A.18-07-011/012 for the Purpose of Enforcing D.20-04-008, tendered for filing as a Petition for Modification, received 4/26/2021 [Efile Control 165035] - NOTICE OF REJECTION.

[EXTERNAL]

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Good Mbrning.

Our Advisor to the Docket Office issued a Directive that the subject “Petition” be rejected bec it is not a Petition for Modification and there is no authorization to reopen the proceedings otherwise, which was closed on April 8, 2021. Efile Control 165035 was accordingly rejected.

*Be well & Stay Safe !*

*Best R egard.*

**Martin M Nakahara**

Senior Legal Analyst - Docket Office

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**Attachment B**

Letter from D. Thygesen, Vice President – Wholesale and Platform Operations, T-Mobile, at 1  
(Oct. 2, 2020)



## Sprint Wholesale Notice – Sprint Network Shutdown

October 2, 2020

T-Mobile is pleased to have our MNSA with DISH signed and to now have going on three months of partnership together! We want to provide DISH with plenty of advance time and details as they become available regarding network decommissioning. As has long been announced, T-Mobile will be decommissioning the Sprint networks over time to enhance the T-Mobile network. This notice is intended to be the first under MNSA Annex 1 Section 2.1(c), T-Mobile is providing this early notice regarding legacy Sprint network shutdown plans and the impact to your End Users depending on the type of device they have as described below.

As you know, Sprint and T-Mobile came together as one company in April 2020 to create the New T-Mobile, a supercharged Un-carrier that will deliver a transformative 5G network. That promise is fast becoming reality. T-Mobile is in the process of combining the legacy Sprint and T-Mobile networks to create a nationwide network poised to bring 5G to consumers and businesses alike in both urban areas and underserved rural communities. This combination promises to deliver more bandwidth than ever before.

As part of this effort, T-Mobile intends to shut down the Sprint CDMA Network on or around January 1, 2022 to allow customers to take advantage of the speed, capacity and capabilities available on the new T-Mobile Network. The Sprint CDMA Network will not be available after that date. Between now and the time that the Sprint CDMA Network is fully decommissioned, capacity and coverage of the Sprint CDMA Network is expected to change. Please stand by for T-Mobile planning sessions to discuss evolving network plans; and expect market-specific shutdown notices at least six months in advance as provided in Section 2.2(c) of Annex 1 of the MNSA. We will be sending an additional notice on Sprint LTE shutdown plans as those plans develop. As additional details of the shutdown plan become available, such as the timing for specific markets, we will provide DISH updates so you can refine your plans for End User migration efforts.

What this means for you and those of your End Users using the Sprint legacy networks:

- **CDMA-Only Devices or dual mode CDMA/LTE devices that do not support Voice over LTE (VoLTE):** These devices will be impacted. If you have a CDMA-only capable device (handsets, IoT/M2M, tablets and air cards), or a device that does not support VoLTE you will need to upgrade or replace your equipment, where technically possible.
- **Data only CDMA/LTE-capable Devices and data only Single-Mode LTE Devices:** For data-only CDMA/LTE-capable devices, LTE data service will continue to function if LTE is enabled in the device settings while the legacy Sprint LTE network remains operational. For data-only Single-Mode LTE devices, LTE data service will continue to function as well while the legacy Sprint LTE network remains operational.
- **VoLTE-capable CDMA/LTE-capable Devices:** These devices will lose CDMA capability, but LTE data service will continue to function while the legacy Sprint LTE network remains operational if LTE is enabled in the device settings **and VoLTE is enabled.**

The T-Mobile MVNO and TSA team will reach out to you over the next several weeks to discuss a migration path that would result in End Users being activated on the new T-Mobile Network. A migration support request can be submitted through the Additional Services process as defined in TSA Section 1.5.

T-Mobile looks forward to continuing to meet your needs and bring you exciting new services. For more information about the T-Mobile Network and planned innovations and improvements, visit <https://www.t-mobile.com/news>.

Thank you for your business.

Dan Thygesen,  
VP - Wholesale and Platform Operations  
T-Mobile for Business

*Dan Thygesen*

**Attachment C**

Declaration of Ankur Kapoor in Support of T-Mobile's Response to DISH's Petition to Modify

**DECLARATION OF ANKUR KAPOOR IN SUPPORT OF T-MOBILE'S RESPONSE  
TO DISH'S PETITION TO MODIFY**

I, Ankur Kapoor, hereby declare as follows:

1. I am the Senior Vice President, National Planning, Performance & Intelligence of T-Mobile US, Inc. ("T-Mobile").
2. I am responsible for Network Capacity Planning, Network Performance & Monitoring, Customer Insights & Big Data Analytics. As part of these responsibilities, I am aware of T-Mobile's network plans, as well as the characteristics and performance capabilities of the various spectrum bands and network components in use as part of T-Mobile's wireless operations. I am also aware of T-Mobile's network integration and customer migration efforts, including those undertaken as part of the MetroPCS network migration.
3. I have read and understand the contents of the foregoing May 28, 2021 response ("May 28, 2021 Response") to DISH Network Corporation's petition to modify D.20-04-008 filed on April 28, 2021.
4. Based on my personal knowledge, I verify the truth and accuracy of the information provided in the May 28, 2021 Response.
5. CDMA is an obsolete technology that does not deliver an adequate level of service compared to LTE (4G) or 5G to meet customers' needs. CDMA is only capable of providing 1-3 Mbps speeds and therefore cannot support a wide variety of modern use cases, such as simultaneous calling and browsing, HD video streaming, ultra 4K video streaming, remote learning, telecommuting, TeleHealth, or gaming. 4G/5G, such as what Boost customers will be migrated to, support all these use cases and provide speeds 100 to 300 times faster than CDMA.
6. CDMA networks are also deteriorating over time as components are no longer being produced due to the imminent industry-wide sunset and replacement parts are therefore harder to obtain.
7. 4G/5G networks also provide greatly enhanced 911 location and public safety capabilities. CDMA provides limited ability to locate emergency callers and has 50-meter location accuracy only 70% of the time, and only 20% of the time when the Assisted Global Navigation Satellite System is not available. CDMA also lacks vertical location capabilities. Conversely, 4G/5G networks provide 50-meter location accuracy 90% of the time using Device Based Hybrid and have vertical location capabilities.
8. T-Mobile does not only use 800 MHz spectrum to provide CDMA service. PCS spectrum comprises the significant majority of spectrum being used to provide CDMA



service. Requiring T-Mobile to maintain the CDMA network will impact the refarming of this PCS spectrum to support 5G service.

9. Requiring T-Mobile to maintain operation of the CDMA network will also delay our 5G deployment as it would delay installation of new 5G equipment as many of the towers carrying CDMA equipment need to be upgraded to support 5G and there may not be space on the tower and in the equipment shelter for both 5G and CDMA equipment.
10. Maintaining the CDMA network is extremely costly and T-Mobile's current estimate is that a delay in the CDMA sunset to July of 2023 would cost the company around **BEGIN CONFIDENTIAL \*\*\* \$REDACTED \*\*\* END CONFIDENTIAL** in lost merger synergies that would have supported 5G deployment. These costs result from, among other things, the need to renew site leases that could otherwise be decommissioned; backhaul costs; labor, utilities, and maintenance; conducting redundant site visits; and core CDMA network costs.
11. During the MetroPCS customer migration, T-Mobile utilized many different means to communicate with customers, including the practice of calling or texting a customer's phone number to inform them of the transition in a timely manner to ensure a smooth migration. As a result of measures like these nearly 9 million MetroPCS customers were migrated without problems. T-Mobile did not come across any significant issues reaching the prepaid MetroPCS customer base in a timely fashion during that migration process.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 28, 2021.

/s/ Ankur Kapoor  
Ankur Kapoor

**Attachment D**

BOOST MOBILE, CDMA Network Migrations FAQs,

<https://www.boostmobile.com/support/faq/plans-services/cdma-migration.html>



# Frequently Asked Questions

## CDMA Network Migration FAQs

[I heard that my phone may not work beginning in January of 2022. What does that mean?](#)

[What are the benefits of the Expanded Data Network?](#)

[How do I get on the Expanded Data Network?](#)

[What if I'm already on the Expanded Data Network?](#)

[How do I know which network I'm on?](#)

[What is required to get on the Expanded Data Network?](#)

[How do I know whether my phone is eligible for the Expanded Data Network or if I'll need a new one?](#)

[How long do I have to transition to the Expanded Data Network?](#)

### I heard that my phone may not work beginning in January of 2022. What does that mean? [\(top\)](#)

Boost Mobile has historically provided talk, text and data on the Sprint network. In June of 2020, we transitioned to the T-Mobile network as part of T-Mobile's acquisition of Sprint. T-Mobile plans on shutting down existing Sprint cellular towers, which means customers who use phones that access the old Sprint network will no longer receive service.

If you've received a message from Boost Mobile asking you to upgrade, you may still be using the Sprint network. To take advantage of Boost Mobile's Expanded Data Network, you'll need to either upgrade your phone or switch to a new SIM card before the tower shutdown in January 2022.

### What are the benefits of the Expanded Data Network? [\(top\)](#)

Our Expanded Data Network offers a stronger signal, more coverage and faster speeds! The 4G LTE signal is strong and reliable, covering 99% of Americans. You'll experience faster upload and download speeds, and you'll be able to talk and surf the web at the same time!

### How do I get on the Expanded Data Network? [\(top\)](#)

We're dedicated to ensuring our customers have the best service possible, and transitioning to our new Expanded Data Network is the best way to do that. Each customer is unique, so we have a solution for you based on your account. Go to your nearest Boost Mobile store (<https://www.boostmobile.com/stores.html>) to find out more.

### What if I'm already on the Expanded Data Network? [\(top\)](#)

Great news: If you're already on our latest and greatest network, there's no action needed on your part.

### How do I know which network I'm on? [\(top\)](#)

To find out which network you're on, log in to My Account and click "View Coverage" on your dashboard. If it opens the Nationwide map, you're on the old Sprint network. If it opens the Expanded Data Network map, you're on the new network.

### What is required to get on the Expanded Data Network? [\(top\)](#)

All you need is an eligible phone and a new SIM card. If you already have an eligible device, we can send you a free SIM card so you can make the swap at home and start utilizing the Expanded Data Network! There is no cost to you and there will be no charge to your current plan.

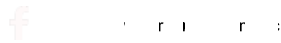
### How do I know whether my phone is eligible for the Expanded Data Network or if I'll need a new one? [\(top\)](#)

Head to your nearest Boost Mobile store (<https://www.boostmobile.com/stores.html>) or call us at 1-866-402-7366 to see if your phone is compatible with the Expanded Data Network. If it isn't, you'll have until early next year to upgrade to a new one. Ready to upgrade now? We've got a great selection of affordable phones (<https://www.boostmobile.com/phones?intnav=TopNav:Phones:AllPhones>) that will work on the Expanded Data Network, and we've got exciting promotions (<https://www.boostmobile.com/expanded-plans.html?intnav=TopNav:Plans:PhonePlans>) running right now to help you save even more!

## How long do I have to transition to the Expanded Data Network?

[\(top\)](#)

You don't have to switch right now, but we want to make sure you're taking advantage of a better network experience as soon as you can. When you're ready to take advantage of the upgraded Expanded Data Network, please visit your nearest Boost Mobile store (<https://www.boostmobile.com/stores.html>) and we'll be happy to assist you.

[SHOP](#)[PLANS & SERVICES](#)[MY BOOST](#)[SUPPORT](#)

Legal | (<https://www.boostmobile.com/about/legal.html?INTNAV=BotNav:Legal:Legal>) Privacy | (<https://www.boostmobile.com/about/legal/privacy-policy.html?INTNAV=BotNav:Legal:Privacy>)  
 Regulatory | (<https://www.boostmobile.com/about/legal/regulatory.html?INTNAV=BotNav:Legal:Regulatory>) CA Privacy Rights | (<https://www.boostmobile.com/about/legal/privacy-policy.html#/10>) Do Not Sell Info Request | (<https://www.boostmobile.com/ccportal.html>) Ad-Choices | (<https://www.boostmobile.com/about/legal/adchoices.html?INTNAV=BotNav:Legal:AdChoices>) Accessibility (<https://www.boostmobile.com/support/faq/phones-devices/hearing-aid-compatibility.html?INTNAV=BotNav:Legal:Accessibility>)  
 (<https://www.dish.com>) (<https://www.sling.com>) © 2021 DISH Wireless LLC. All rights reserved.



**Attachment E**

Declaration of Max Caballero-Vieyra in Support of T-Mobile's Response to DISH's Petition to  
Modify

**DECLARATION OF MAX CABALLERO-VIEYRA IN SUPPORT OF T-MOBILE'S  
RESPONSE TO DISH'S PETITION TO MODIFY**

I, Max Caballero-Vieyra, hereby declare as follows:

1. I am the Senior Vice President, Device & Supply Chain of T-Mobile US, Inc. ("T-Mobile").
2. I am responsible for the portfolio, sourcing, vendor management and all supply chain activities related to mobile devices. As part of these responsibilities I engage with mobile handset manufacturers and am aware of the general supply of handsets that are compatible on the T-Mobile 4G/5G network. I am also aware of the discussions with DISH with respect to the CDMA sunset and migration of Boost customers to the T-Mobile network.
3. I have read and understand the contents of the foregoing May 28, 2021 response ("May 28, 2021 Response") to DISH Network Corporation's petition to modify D.20-04-008 filed on April 28, 2021.
4. Based on my personal knowledge, I verify the truth and accuracy of the information provided in the May 28, 2021 Response.
5. T-Mobile is undertaking the same migration as DISH – off the legacy Sprint CDMA network – but for a much larger group of customers. T-Mobile needs the same devices as DISH to transition our customers. Despite migrating a far larger group of customers, T-Mobile has come up against no shortage of compatible devices. We have confirmed with a leading device manufacturer that there are no issues fulfilling T-Mobile's projected allocation for the rest of the year on a timely schedule for the CDMA sunset. Significantly, the allocation exceeds the amount of handsets required by T-Mobile's immediate needs by a significant amount and, while the manufacturer could not comment on its ability to meet the needs of any other customer such as DISH, it is logical that a reduction in demand by one customer would free resources to meet new demand from another customer.
6. An examination of phone sales in early 2021 reveals there is currently no shortage of devices compatible on T-Mobile's network. Specifically, in the first fiscal quarter of 2021 about 33 million phones were sold in the United States across over 170 device models. That volume was up nearly 20% from the first fiscal quarter of 2020. Of those 33 million phones sold, we estimate 91% were compatible with the T-Mobile network, and about 7 million were priced at \$250 or less.
7. DISH cites the exit of LG from the handset business as a complicating factor in the migration but as noted other supplies are available, and moreover, relying heavily on one vendor is simply not a smart business strategy.

8. T-Mobile wants the sunset of CDMA service to be a successful and seamless transition to better service, faster speeds, and broader coverage on the world-leading T-Mobile network. To that end, we have been following tried-and-true industry techniques for migrating customers. Despite migrating a far larger group of customers than DISH, by taking the below measures T-Mobile is on pace to migrate all of our customers off the legacy Sprint CDMA network by the end of the year.
9. T-Mobile has begun robust direct marketing campaign and is providing advance notice to customers no less than 180 days before the CDMA sunset in any area. T-Mobile has a detailed customer contact strategy in place to ensure it reaches all of its customers in sufficient time to ensure a smooth transition, including informing customers of the date of the sunset, what will happen to the customer's service after the sunset, notifying the customer that they must upgrade their device to maintain service, advising the customer how to contact customer service or schedule an appointment at their nearest T-Mobile retail location, and providing them with details on promotions for device upgrades.
10. T-Mobile is offering promotions to encourage our customers to upgrade their devices to ones compatible on the T-Mobile network. New or existing T-Mobile customers can upgrade to the new network at no cost to them by trading in their existing phone for a Samsung Galaxy A32 5G smartphone for free. To the extent any customers are reluctant to upgrade because they are worried they will pay more for service on the new network, we've alleviated any such concerns by committing that migrating customers will pay the same or less for 4G/5G service, with 5G provided at no extra charge.
11. T-Mobile has procured a sufficient supply of 4G/5G compatible handsets to migrate our customers by January 1, 2022, and we are making available free compatible replacement handsets (if needed) to migrate any remaining customers.
12. **BEGIN CONFIDENTIAL \*\*\* REDACTED**  
[REDACTED]  
**\*\*\* END CONFIDENTIAL**
13. T-Mobile has a much larger number of CDMA customers in California to migrate than DISH. As of April, 2021, T-Mobile has **BEGIN CONFIDENTIAL \*\*\* REDACTED \*\*\***  
**END CONFIDENTIAL** CDMA customers that can be migrated via a SIM card swap in California and has **BEGIN CONFIDENTIAL \*\*\* REDACTED \*\*\***  
**END CONFIDENTIAL** CDMA customers in California requiring handset replacements. Thus far, T-Mobile has come across no difficulties migrating our CDMA customers via SIM swaps.
14. T-Mobile has implemented, and continues to implement, a number of steps to facilitate DISH's customer network migration off the legacy Sprint CDMA network to the T-

Mobile network. T-Mobile provided DISH with fifteen-month advance notice (instead of the contractually mandated six) of the CDMA sunset.

15. T-Mobile offered to implement a low-cost VoLTE/MOCN solution to extend the life of an estimated very large number of handsets (based on T-Mobile forecasts, assumptions, and projections) by an additional six months; DISH declined this offer.
16. T-Mobile also furnished DISH with the unique capability to migrate Boost customers to the new T-Mobile network using widely available VoLTE-compatible phones; DISH subsequently underutilized the capability.
17. T-Mobile has offered to assist DISH in its efforts to secure 4G/5G compatible handsets for its CDMA customers who require handset replacements. T-Mobile contacted DISH personnel on Wednesday, March 31, 2021, to offer assistance to DISH with procuring handsets and inquiring generally about DISH's handsets needs. On Friday, May 7, 2021, T-Mobile followed up with a letter reiterating its willingness to work with DISH to find ways to assist it with securing sufficient handsets to transition Boost's CDMA customers to the T-Mobile network. On Tuesday, May 11, 2021, I reached out to DISH to once again reiterate our offer of assistance to DISH with respect to securing handsets. To date, DISH has not accepted this offer of assistance. As referenced above, it is T-Mobile's understanding that there are sufficient handsets in the market for DISH to effectuate a timely migration of its Boost customers to the T-Mobile network.
18. Notwithstanding the above, T-Mobile reaffirms our continued willingness to assist DISH in acquiring the 4G and/or 5G capable handsets that are compatible with the T-Mobile network in sufficient quantities to meet Boost's California needs and in a timeframe consistent with meeting the January 1, 2022 sunset date for the CDMA network. Specifically, the handsets we would assist in procuring would include a mix of 4G and 4G/5G devices to be used solely for the purpose of replacing CDMA handsets of Boost's California customers that are incompatible with the T-Mobile network. T-Mobile would work with DISH, as appropriate, to secure this supply for DISH to purchase and do so at no charge for its assistance.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 28, 2021.

/s/ Max Caballero-Vieyra  
Max Caballero-Vieyra



**Attachment F**

Declaration of Brian Schmidt in Support of T-Mobile's Response to DISH's Petition to Modify

**DECLARATION OF BRIAN SCHMIDT IN SUPPORT OF T-MOBILE'S RESPONSE  
TO DISH'S PETITION TO MODIFY**

I, Brian Schmidt, hereby declare as follows:

1. I am the Director of Quality and Analytics of T-Mobile US, Inc. ("T-Mobile").
2. I am responsible for device related reporting and analytics across T-Mobile, including forecasting. We provide forecasts to all of T-Mobile (especially long term forecasts beyond six months) that are used for T-Mobile's capacity planning, migration activities, and earnings numbers, among other uses. I also analyze existing subscriber bases for technology support such as network bands, 5G, VoLTE, etc. Previously, I performed this role at Sprint for eight years, and as part of that work focused on merger and integration activities, including the migration of legacy Sprint customers to the T-Mobile network. As a result of this work I am intimately familiar with the below forecasts and T-Mobile's methodology for developing the forecasts.
3. I have read and understand the contents of the foregoing May 28, 2021 response ("May 28, 2021 Response") to DISH Network Corporation's petition to modify D.20-04-008 filed on April 28, 2021.
4. Based on my personal knowledge, I verify the truth and accuracy of the information provided in the May 28, 2021 Response.
5. At the time of divestiture in June, 2020, Boost had the following breakdown of CDMA devices.

**Boost Customers on Legacy Sprint CDMA Network**

<b>California State</b>	REDACTED
CDMA-Only Handset Replacement Required	REDACTED
Compatible w/ SIM Card Swap	REDACTED
<b>TOTAL on legacy Sprint CDMA</b>	REDACTED

6. T-Mobile's June 2020 figures are based on REDACTED at the time of the divestiture of Boost to DISH.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 28, 2021.

/s/ **Brian Schmidt**  
Brian Schmidt